

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROBIN MILLARD**  
Claimant

**APPEAL NO: 14A-UI-05946-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – BURLINGTON INC**  
Employer

**OC: 04/27/14**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 4, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 2, 2014. The claimant participated in the hearing. Deb Perdue, Branch Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production operator for Temp Associates Burlington last assigned to Veyance Technology from October 25, 2013 to March 25, 2014. The client ended her assignment due to insubordination.

On February 15, 2014, another temporary employee was being trained on the baler machine and the claimant left her work station to confront the trainer about why the new employee was being trained on a new machine instead of the claimant. On February 16, 2014, the claimant approached Supervisor Brenda Allen and complained about the trainer training a new employee on the baler machine instead of the claimant. Ms. Allen told the claimant she needed to worry about herself instead of everyone else and she had no right to go over and confront the trainer. The claimant replied that she had every right because everyone else working there had been there less time than she had and she felt she should be paid more. It was the claimant's understanding that employees receive increases in pay dependent upon the number of machines they know how to run. The claimant walked away while Ms. Allen was still talking and consequently received a verbal warning.

The final incident occurred March 25, 2014, when the claimant exhibited a negative attitude and was insubordinate towards Ms. Allen, who reported her conduct to the employer's on-site coordinator, Becky Snyder, who prepared a written warning for the claimant. Ms. Snyder approached the claimant with the written warning and the claimant refused to sign it. The warning talked about the claimant's attitude and disrespectful manner when speaking to Ms. Allen. Veyance Technology then decided to end the claimant's assignment.

On March 26, 2014, the claimant called Ms. Snyder and stated she thought another employee was creating the problem and trying to get her fired so she was going to begin looking for other employment. Ms. Snyder informed the claimant the client had ended the assignment and the claimant hung up on her.

On March 27, 2014, the claimant called Ms. Snyder and apologized for hanging up on her. She repeated her belief that another temporary employee was trying to get her discharged and she thought Ms. Allen was "in on it." She stated she knew she could get a little "snippy" with others who were not doing their jobs. She ended the conversation by stating she did not want Temp Associates to look for further assignments for her.

On March 31, 2014, the claimant called Ms. Snyder again and stated she was applying for unemployment benefits and when she called the other day she did "not mean she was quitting but that (she) was firing the employer. She stated if the employer contested her unemployment she would go to an attorney.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being

limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

The employer's client, Veyance Technology, ended the claimant's assignment because she was insubordinate and disrespectful toward her supervisor, Ms. Allen, and refused to sign the written warning issued to her March 25, 2014. The claimant had no supervisory authority and while she understandably wanted to be trained on different machines so she could potentially earn more money per hour, the decision of who to train on various machines was a business decision left to the employer, not to the claimant. The manner in which she expressed her opinion on that decision was inappropriate and disrespectful to the new employee, the trainer and Ms. Allen.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the

employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. While there is no evidence the claimant received benefits due to any fraud or willful misrepresentation, the employer participated in the fact-finding interview and consequently the recovery of the benefit overpayment from the claimant cannot be waived. The claimant has received benefits but was not eligible for those benefits. She is overpaid benefits in the amount of \$2,210.00.

**DECISION:**

The June 4, 2014, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. Because the employer participated in the fact-finding interview the overpayment of benefits cannot be waived. The claimant is overpaid benefits in the amount of \$2,210.00,

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs